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August 13, 1999

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Region 7
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Kansas City, KS 66101


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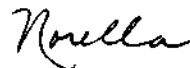
RE: MEW Site

Dear Dave and Alex:

In accordance with the Consent Decree, I enclose a copy of the Complaint brought by the MEW Site Trust Fund against a number of PRPs. The suit was filed on August 11, 1999 in the Eastern Division of the Federal District Court, Eastern District of Missouri.

Best regards.

Sincerely yours,



Norella V. Huggins

NVH:rmh

Enclosure

cc: George von Stamwitz
Thomas Siedhoff

MEW Site File
CFD-113495

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

AUG 11 1999

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

MEW SITE TRUST FUND, STATE STREET
BANK and TRUST COMPANY of MISSOURI,
N.A., Trustee,

Plaintiff,

v.

ALLEN TRANSFORMER COMPANY,
AMSTED INDUSTRIES INCORPORATED,
B & D ELECTRIC, INC.,
BEYER CRUSHED STONE,
BRADFORD ELECTRIC CO., INC.,
CARDINAL ELECTRIC MOTOR REPAIR,
CHOCK FULL O'NUTS,
CITY OF MOUNT VERNON, MISSOURI,
CITY OF NEW MADRID, MISSOURI
CITY OF WEST PLAINS, MISSOURI,
COTTER ELECTRIC COMPANY,
DELTA-Y ELECTRIC COMPANY,
ECRECON, INC.
ELECTRICAL WORLD, INC.,
FLANDERS ELECTRIC MOTOR SERVICE,
FLORIDA POWER & LIGHT COMPANY,
GLOW ELECTRIC COMPANY
GUARDIAN AUTOMOTIVE TRIM, INC.
ILLINOIS DEPARTMENT OF CORRECTIONS
INTERSTATE POWER COMPANY,
JILNANCE CORPORATION
JOLIET EQUIPMENT CO.,
MT. VERNON ELECTRIC MOTOR SERVICE, INC.,
NATIONAL WRECKING COMPANY, INC.
ROY G. LETOURNEAU CO.,
STANLEY MUFFLER
STEVENS ELECTRIC CO.,
T&R ELECTRIC SUPPLY CO., INC.,
WHITFIELD ELECTRIC COMPANY,

Defendants.

CIVIL ACTION NO.

4:99CV01277RWS

MEW Site File
CFD-113496

COMPLAINT

COMES NOW plaintiff, by its counsel, and for its Complaint and causes of action against defendants, alleges and states as follows:

Preliminary Statement

1. This is a civil action brought under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), by the MEW Site Trust Fund, State Street Bank and Trust Company of Missouri, N.A., Trustee (hereinafter the "MEW Trust" or "plaintiff").

2. The action is brought to recover the costs of response incurred and which may be incurred by the members of the MEW Trust in response to releases and threatened releases of polychlorinated biphenyls ("PCBs") and other hazardous substances at a facility in Cape Girardeau, Missouri (the "Site"), formerly owned and operated by Missouri Electric Works, Inc. ("MEW").

3. The action also seeks contribution from each defendant pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f). Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, the MEW Trust seeks a declaratory judgment that each defendant shall be liable for response costs incurred by the MEW Trust in the future at the Site.

Jurisdiction and Venue

4. Pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §9607 and §9613(b), and 28 U.S.C. §1331, this Court has jurisdiction over the subject matter of this action and the parties hereto.

5. Venue lies in the Eastern District of Missouri pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because the releases and threatened releases of hazardous substances and damages at issue occurred in this District.

The Plaintiff

6. The MEW Trust is a trust created under the Missouri Electric Works, Inc. Site Trust Agreement, by and between forty-two entities who have incurred and will in the future incur "response costs" as defined by CERCLA Section 101(25), 42 U.S.C. § 9601(25). State Street Bank and Trust Company of Missouri, N.A., is the Trustee of the MEW Trust.

7. The MEW Trust is a "person" within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

The Defendants

8. Defendant Allen Transformer Company is a corporation organized under the laws of the State of Arkansas and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1980 and 1981, Allen Transformer arranged for the disposal of electrical transformer oil containing PCBs at the Site.

9. Defendant AMSTED Industries Incorporated is a corporation organized under the laws of the State of Delaware and is a "person" within the meaning of CERCLA Section 101(21). In 1982, the American Steel Foundries division of AMSTED Industries Incorporated arranged for the disposal of electrical transformer oil containing PCBs at the Site.

10. Defendant B & D Electric, Inc. is a corporation organized under the laws of the State of Indiana and is a "person" within the meaning of CERCLA Section 101(21). In at least

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1985, B & D Electric, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

11. Defendant Beyer Crushed Stone is or was a corporation organized under the laws of the State of Missouri and is a "person" within the meaning of CERCLA Section 101(21). Between 1976 and 1980, Beyer Crushed Stone arranged for the disposal of electrical transformer oil containing PCBs at the Site.

12. Defendant Bradford Electric Company, Inc. is a corporation organized under the laws of the State of Delaware and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1966 and 1981, Bradford Electric Company, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

13. Defendant Cardinal Electric Motor Repair, Inc. is a corporation organized under the laws of the State of Missouri and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1981 and 1987, Cardinal Electric Motor Repair, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

14. Defendant Chock Full O'Nuts is a corporation organized under the laws of the State of New York and is a "person" within the meaning of CERCLA Section 101(21). In 1983, a division of Chock Full O'Nuts, Old Judge Coffee Division, arranged for the disposal of electrical transformer oil containing PCBs at the Site.

15. Defendant City of Mount Vernon, Missouri is a city organized and existing pursuant to the laws of the State of Missouri and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1956 and 1958, City of Mount Vernon, Missouri, arranged for the disposal of electrical transformer oil containing PCBs at the Site.

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16. Defendant City of New Madrid, Missouri is a city organized and existing pursuant to the laws of the State of Missouri and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1956 and 1959, City of New Madrid, Missouri arranged for the disposal of electrical transformer oil containing PCBs at the Site.

17. Defendant City of West Plains, Missouri is a city organized and existing pursuant to the laws of the State of Missouri and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1956 and 1959, City of West Plains, Missouri arranged for the disposal of electrical transformer oil containing PCBs at the Site.

18. Defendant Cotter Electric Company is a corporation organized under the laws of the State of Michigan and is a "person" within the meaning of CERCLA Section 101(21). Between 1973 and 1978, Cotter Electric Company arranged for the disposal of electrical transformer oil containing PCBs at the Site.

19. Defendant Delta-Y Electric Company is a corporation organized under the laws of the State of Missouri and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1981 and 1983, Delta-Y Electric Co. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

20. Defendant EcReCon is a corporation organized under the laws of the State of Delaware and is a "person" within the meaning of CERCLA Section 101(21). In 1985, EcReCon arranged for the disposal of electrical transformer oil containing PCBs at the Site.

21. Defendant Electrical World, Inc. is a corporation organized under the laws of the State of Delaware and is a "person" within the meaning of CERCLA Section 101(21). In 1976,

Electrical World, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

22. Defendant Flanders Electric Motor Service, Inc. is a corporation organized under the laws of the State of Indiana and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1971 and 1988, Flanders Electric Motor Service, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

23. Defendant Florida Power & Light is a corporation organized under the laws of the State of Florida and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1976 and 1978, Florida Power and Light arranged for the disposal of electrical transformer oil containing PCBs at the Site.

24. Glow Electric Co. is a corporation organized under the laws of the State of Illinois and is a "person" within the meaning of CERCLA Section 101(21). In the 1970's, Glow Electric arranged for the disposal of electrical transformer oil containing PCBs at the Site.

25. Defendant Guardian Automotive Trim, Inc., formerly known as Windsor Plastics, Inc. is a corporation organized under the laws of the State of Nevada and is a "person" within the meaning of CERCLA Section 101(21). In 1986 and 1988, Windsor Plastics, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

26. The Illinois Department of Corrections operates the Statesville Correctional Center and is a "person" within the meaning of CERCLA Section 101(21). In 1975, the Statesville Correction Center arranged for the disposal of electrical transformer oil containing PCBs at the Site.

27. Defendant Interstate Power Company is a corporation organized under the laws of the State of Delaware and is a person within the meaning of CERCLA Section 101(21). Between at least 1980 and 1983, Interstate Power Company arranged for the disposal of electrical transformer oil containing PCBs at the Site.

28. Defendant Jilnance Corporation is a corporation organized under the laws of the State of New York. Jilnance Corporation does and has done business as Power Equipment Company and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1972 and 1979, Power Equipment Company arranged for the disposal of electrical transformer oil containing PCBs at the Site.

29. Defendant Joliet Equipment Corporation is a corporation organized under the laws of the State of Delaware and is a "person" within the meaning of CERCLA Section 101(21). In 1977, Joliet Equipment Corporation arranged for the disposal of electrical transformer oil containing PCBs at the Site.

30. Defendant Mt. Vernon Electric Motor Service, Inc. is a corporation organized under the laws of the State of Indiana and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1970 and 1983, Mt. Vernon Electric Motor Service, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

31. Defendant National Wrecking Company is a corporation organized under the laws of the State of Illinois and is a "person" within the meaning of CERCLA Section 101(21). In 1977, National Wrecking Company arranged for the disposal of electrical transformer oil containing PCBs at the Site.

32. Defendant Roy G. Letourneau Company, Inc. is a corporation organized under the laws of the State of Minnesota and is a "person" within the meaning of CERCLA Section 101(21). In 1983, Roy G. Letourneau Company, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

33. Stanley Muffler, Inc. is a corporation organized under the laws of the State of Missouri and is a "person" within the meaning of CERCLA Section 101 (21). In or around 1974, Stanley Muffler arranged for the disposal of electrical transformer oil containing PCBs at the Site.

34. Defendant Stevens Electric Co. is a corporation organized under the laws of the State of Tennessee and is a "person" within the meaning of CERCLA Section 101(21). In at least 1977, Stevens Electric Co. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

35. Defendant T & R Electric Supply Co., Inc. is a corporation organized under the laws of the State of South Dakota and is a "person" within the meaning of CERCLA Section 101(21). Between 1977 and 1980, T & R Electric Supply Co. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

36. Defendant Whitfield Electric Company is a corporation organized under the laws of the State of Kentucky and is a "person" within the meaning of CERCLA Section 101(21). Between at least 1956 and 1978, Whitfield Electric Company arranged for the disposal of electrical transformer oil containing PCBs at the Site.

GENERAL ALLEGATIONS

37. From approximately 1954 to 1988, MEW operated an electrical transformer repair business at the Site at which it serviced, repaired, rebuilt, purchased, sold and scrapped electrical equipment, including electrical transformers.

38. During the operation of MEW's business, PCBs and other hazardous substances leaked and/or were spilled onto the ground, and the Site became contaminated with high levels of PCBs and other hazardous substances.

39. In 1984 the Missouri Department of Natural Resources ("MDNR") inspected the MEW Site and found numerous drums containing electrical oil. These drums were used by MEW to store PCB-contaminated oil drained from transformers and other electrical equipment sent to the Site.

40. The Site also contained more than 100 transformers sent to the Site by one or more of the defendants. PCB-contaminated oil leaked from some of these transformers onto the ground at the Site. Other transformers and electrical equipment were repaired, serviced, stored or dismantled for scrap at the Site.

41. From 1985 until 1990, EPA undertook removal and investigative actions pursuant to Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), to define the nature and extent of contamination and to control further migration of hazardous substances from the Site.

42. EPA asserted that certain parties were potentially responsible parties ("PRPs") under section 107 of CERCLA and thus were responsible for the remediation of the Site.

43. Each defendant in this case was notified by EPA that it was a potentially responsible party ("PRP") in connection with the Site.

44. In December 1988 EPA signed an administrative order on consent under which certain parties, including members of the MEW Trust, agreed to conduct a remedial investigation and feasibility study ("RI/FS") to determine the nature and extent of contamination of the Site and to evaluate various options for remediating the Site.

45. Approximately 180 of the PRPs, including members of the MEW Trust, joined the MEW Steering Committee ("MEWSC"), an unincorporated association, and the MEWSC coordinated efforts to conduct the RI/FS.

46. The RI/FS indicated that over 70% of the Site's surface soil as well as soils off the site were contaminated with PCBs at concentrations exceeding 10 parts per million ("ppm"). Approximately four acres of contaminated surface soil at the site contained PCB concentrations of at least 500 ppm.

47. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990. 55 Fed. Reg. 6158 (1990).

48. On June 29, 1992, the United States filed a Complaint on behalf of the Administrator of the U.S. EPA pursuant to Sections 104(a) and (b), 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), 9606 and 9607(a), against numerous PRPs to recover the costs which had been and would be incurred by the United States in responding to the releases or threatened releases of hazardous substances at the Site, and to require remedial action with regard to all hazardous substances in accordance with the terms of the Record of Decision prepared for the Site and the National Contingency Plan. The case was styled United States of America v.

Union Electric Company, et al., Civil Action No. 1:92 CV 00078 GFG (United States District Court for the Eastern District of Missouri, Southeastern Division).

49. The State of Missouri filed a similar complaint against the same PRP defendants, styled State of Missouri v. Union Electric Company, et al., Civil Action No. 1:92 CV 00088 GFG. The cases were consolidated.

50. The members of the MEW Trust Fund and numerous de minimis parties entered into a Consent Decree with the United States and the State of Missouri under which the members of the MEW Trust as Settling Defendants are obliged to perform soil remediation and groundwater investigation at the Site. The Consent Decree also obligates the members of the MEW Trust Fund to pay the United States and the State of Missouri oversight and response costs incurred after September 3, 1990. The Consent Decree was approved and entered by the Court on August 14, 1996.

51. Each of the defendants is a PRP at the Site.

COUNT I

Recovery of Response Costs and Declaratory Judgment

52. Paragraphs 1-51 are incorporated herein by reference.

53. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

* * *

(3) any person who by contract, agreement or otherwise arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at

any facility . . . owned or operated by another party or entity and containing hazardous substances . . .

(4) any person who . . . accepted any hazardous substances for transport to disposal or treatment facilities . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

54. Each defendant, by contract, agreement, or otherwise arranged for the disposal, repair, storage and/or treatment, or arranged with a transporter for transport for disposal, repair, storage and/or treatment, of hazardous substances, including PCBs, at the Site.

55. PCBs are a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

56. The Site is a "facility" as defined in Section 101(19) of CERCLA, 42 U.S.C. § 9601(19).

57. In response to releases and threatened releases of hazardous substances at the Site, plaintiff was caused to incur, has incurred and will continue to incur necessary costs of response consistent with the National Contingency Plan.

58. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of the defendants is jointly and severally liable to the plaintiff for the response costs that the plaintiff has incurred or will incur in response to releases and threatened releases of hazardous substances at the Site.

WHEREFORE, the MEW Site Trust Fund prays this Court enter a judgment pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a) and a declaratory judgment pursuant to 28 U.S.C. § 2201 and CERCLA Section 113(g), 42 U.S.C. § 9613(g), holding each defendant jointly and severally liable for response costs, applicable attorney fees and prejudgment interest incurred or to be incurred by the members of the MEW Site Trust Fund in response to releases or threatened releases of hazardous substances at the Site, and awarding such other relief as the Court deems just and proper.

COUNT II

Contribution

59. Paragraphs 1-58 are incorporated herein by reference.

60. CERCLA Section 113(f), 42 U.S.C. § 9613(f), provides, in part:

(1) Contribution –

Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring any action for contribution in the absence of a civil action under Section 106 or Section 107.

61. Each defendant is liable or potentially liable under CERCLA Section 107 and has not paid its equitable share in funding response activities respecting the Site, or in reimbursing response costs incurred by plaintiff or U.S. EPA.

62. Pursuant to CERCLA Section 113(f), each defendant is liable in contribution for its equitable share of response costs incurred or to be incurred by the members of the MEW Site

Trust Fund, not including response costs for which the members of the MEW Site Trust Fund may seek reimbursement from the Superfund.

WHEREFORE, the MEW Site Trust Fund prays this Court enter a judgment pursuant to CERCLA Section 113(i), 42 U.S.C. § 9613(f), holding each defendant liable for its equitable share of the response costs incurred and to be incurred by the MEW Site Trust Fund, applicable attorney fees and prejudgment interest, and awarding such other relief as the Court deems just and proper.

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